

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK A. KEETH and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 01-1525; Submitted on the Record;
Issued September 3, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

This case was before the Board on a prior occasion. On April 23, 1997 appellant, a 38-year-old mailhandler/distribution clerk, filed a Form CA-2 claim, for benefits based on occupational disease, alleging that he had developed an emotional condition caused by factors of his employment. Appellant sustained a work-related right shoulder strain in 1990. He sustained another injury to his right shoulder in 1991, which the Office accepted for right shoulder bursitis and cervical disc protrusion at C6-7. Appellant stopped work on March 9, 1991 and returned to light duty on July 5, 1995 for four hours a day.

Appellant was subsequently referred by the Office for a second opinion examination. Based on the findings of this examination, the employing establishment offered him a limited-duty position for eight hours a day, by letter dated February 18, 1997. By letters dated February 19 and March 20, 1997, the Office advised appellant that his compensation would be terminated if he did not accept the offer. Appellant accepted the job offer on April 4, 1997 and began work at the light-duty position on April 5, 1997, although he claimed he was accepting the position against his will and under duress. He stated in his April 23, 1997 Form CA-2, statement that, "since my injury I have been harassed to varying degrees by the [employing establishment]."¹ Appellant alleged that the March 20, 1997 Office letter afforded him 15 days in which he could either accept a light-duty job offer from the employing establishment or have his compensation terminated pursuant to section 8106, constituted an attempt to threaten and

¹ In signing his acceptance, appellant stated, "Signed under extreme duress and against personal physician of record advice; furthermore given the threatening tone intimated in the ... March 20, 1997 [letter], only one alternative is being afforded me which is obviously quite literal and blunt, concede or else. Under these conditions I yield to your omnipotent power."

intimidate him and had made the “stressful” conditions of my life intolerable. Appellant worked for eight hours a day at the light-duty position until December 1997, when his work hours were reduced to five hours a day.

By decision dated October 23, 1997, the Office found that fact of injury was not established, as the evidence of record did not establish that an emotional condition was sustained in the performance of duty.

By letter dated October 31, 1997, appellant’s attorney requested an oral hearing, which was held on June 25, 1998. At the hearing, appellant and his father testified that the employing establishment engaged in a pattern of harassment and created a hostile work environment.² He also asserted that the employing establishment harassed and intimidated him by following him and placing him under surveillance. Appellant alleged that the employing establishment hired investigators who stalked him while he was shopping, walking his dog and fishing and ran him off the road while he was driving his van. In addition, he alleged that there was a conspiracy between the Office and the employing establishment to disparage appellant and withhold relevant medical evidence pertaining to his claims. Appellant did not submit any contemporaneous medical evidence in support of his claim.

By decision dated September 4, 1998, an Office hearing representative affirmed the October 23, 1997 Office decision. In a decision dated December 18, 2000,³ the Board adopted the September 4, 1998 decision of the Office hearing representative.

By letter dated January 12, 2001, appellant requested reconsideration. He alleged a conspiracy between the employing establishment and the Department of Labor to conceal medical evidence supporting his claim that he was unable to perform the light-duty job he accepted under protest on April 4, 1997. Appellant asserted that the Office relied on an erroneous and insufficient medical history in determining he was physically capable of increasing his light-duty work schedule to eight hours a day. Appellant submitted letters from an Office case nurse dated July 20 and August 1, 2000 requesting additional medical information, numerous correspondence between himself, the Office, the employing establishment and his congressional representative regarding requests for additional relevant medical evidence in support of his claim that the Office acted on insufficient additional medical evidence in determining that he was medically able to work an eight-hour shift. Appellant contended that the correspondence he submitted indicated that there were improper communications between the employing establishment and the Office, conducted in furtherance of the conspiracy to coerce him to return to an eight-hour shift against his will; he asserted that the stress caused by his case resulted in his sustaining an emotional condition

Appellant also submitted a January 12, 2001 report from Dr. Randall E. Hayes an osteopath and his treating physician, which indicated that the Office consistently ignored his recommendations that appellant was not medically able to perform the light-duty job for eight

² Appellant’s father appeared at the hearing and read into the record a written statement by appellant.

³ Docket No. 99-855 (issued December 18, 2000).

hours a day and that the stress caused by his case resulted in depression, sleep disruptions, loss of self-esteem, feelings of isolation and despair to the extent of suicidal ideation.

By decision dated February 7, 2001, the Office denied reconsideration.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁴ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁵

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁶ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁷

The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that the employing establishment engaged in a conspiracy to force him to return to work against his will and engaged in a pattern of harassment. These allegations were previously considered and rejected by the Office in its September 23, 1998 decision, which was adopted by the Board in its December 18, 2000 decision. Appellant has alleged, in general terms, harassment and intimidation by the employing establishment and the Office, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations.⁸ Appellant has not submitted any factual evidence to support his allegations that he was harassed, mistreated, or treated in a discriminatory manner by his supervisors.

The Office reviewed all of appellant's specific allegations of harassment, abuse and mistreatment and found that they were not substantiated or corroborated. To that end, the Board

⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁵ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Id.*

⁸ See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work, which do not support his claim for an emotional disability.⁹ For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error or abuse and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹⁰

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. As to appellant's allegation that the Office and employing establishment conspired to conceal medical evidence indicating he was unable to work an eight-hour day, appellant did not provide any evidence that the employing establishment committed error or abuse in gathering medical evidence or in considering his ability to perform light duty. Thus, these actions on the part of management did not constitute a factor of employment. With regard to appellant's allegation that he was forced to return to work, against his will, in a position and at a schedule which he was unable to perform, the Board finds that this amounts to frustration at not being permitted to work in a particular environment and is not a compensable factor under the circumstances of this case.

The Board has held that investigations, which are an administrative function of the employing establishment that do not involve an employee's regularly or specially assigned employment duties, are not considered to be employment factors.¹¹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹² Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable.

The Board notes that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the

⁹ See *Debbie J. Hobbs*, *supra* note 4.

¹⁰ See *Alfred Arts*, 45 ECAB 530 (1994).

¹¹ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹² See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

administration of a personnel matter, may afford coverage.¹³ However, appellant has submitted no evidence indicating that the employing establishment committed error or abuse or that its actions in this instance were unreasonable.

Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment.¹⁴

The decision of the Office of Workers' Compensation Programs dated February 7, 2001 is hereby affirmed.

Dated, Washington, DC
September 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Margreate Lublin*, 44 ECAB 945 (1993).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).